IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

OP.No. 6290 of 2000(W)

PETITIONER:

KANDOTH AHAMMED.
S/O. LATE PERUNTHAYIL MAMMED HAJI,
KANDOTH HOUSE, ARALAM P.O., KANNUR DISTRICT.

BY ADV. SRI.S.ABDUL SALAM
ADV. SRI.ANTONY MUKKATH

RESPONDENTS:
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1. THE TALUK LAND BOARD,
TELLICHERRY AT COLLECTORATE, KANNUR
REPRESENTED BY ITS CHAIRMAN.

2. THE DISTRICT COLLECTOR,
KANNUR.

3. THE TAHSILDAR, TELLICHERRY.

4. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER ADV. SHRI MANOJ KUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No. 10590 OF 2000 IN O.P. 6290 OF 2000

DISMISSED.

05.03.2007 SD/- K.T. SANKARAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

Ext. P1	:	TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT IN TLB NO. 907/73 (TLY) DATED 30.08.1976.
Ext. P2	:	TRUE COPY OF THE REPRESENTATION DATED 21.02.1979 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.
Ext. P3	:	TRUE COPY OF THE JUDGMENT DATED 27.02.1979 OF THE HONOURABLE HIGH COURT OF KERALA IN O.P.NO. 661 OF 1979.
Ext. P4	:	TRUE COPY OF THE REPORT NO.C.5.1684/79 DATED 15.06.1979 OF THE THIRD RESPONDENT.
Ext. P5	:	TRUE COPY OF THE NOTICE NO. TLB. 558/73/TLY DATED 02.05.1995 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
Ext. P6	:	TRUE COPY OF THE ORDER NO. TLB 558/73/TLY DATED 27.07.1999 PASSED BY THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:

Ext. R1(a)	:	A TRUE COPY OF CEILING REUTRN FILED BY THE PETITIONER .
Ext. R1(b)	:	A TRUE COPY OF REPORT OF THE TAHSILDAR.
Ext. R1(c)	:	TRUE COPY OF CEILING RETURN PRODUCED BY THE PETITIONER.
Ext. R1(d)	:	A TRUE COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER DATED 19.07.1996.
Ext. R1(e)	:	A TRUE COPY OF ORDER OF TAHSILDAR TLB. 907/73/TLY DT. 02.02.1984.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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O.P. No. 6290 OF 2000

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Dated this the 6th March, 2007

J U D G M E N T

Ceiling case No. 558 of 1973 was initiated by the Taluk Land Board, Thalassery against Mammed Haji, the father of the petitioner on the basis of Ext. R1(a) ceiling return filed by him under section 85A of the Kerala Land Reforms Act. A final order was passed in the ceiling case on on 30.06. 1977 holding that Mammad Haji is liable to surrender an extent of 7.78 acres of land. An extent of 2.68 acres in R.S.No.2/1 of Aralam village is also included in the extent of 7.78 acres of land directed to be surrendered by Mammad Haji. Mammad Haji challenged the order of the Taluk Land Board in C.R.P.No. 2658 of 1977. That Revision was dismissed. The excess land except an extent of 35 cents of land was taken possession on 22.02.1979.

2. Petitioner who is the son of declarant in Ceiling Case No. 558 of 1973 claims that he is in possession of 2.68 acres of land in R.S.No.2/1 of Aralam Amsom and Desom. The petitioner was the declarant in another Ceiling case wherein he filed a statement which is marked as Ext. R1(C).

He has not claimed that the aforesaid extent of 2.68 acres is in his possession. Ext. R1(d) statement was filed by the petitioner in T. L. B. No. 907 of 1973 in which he was the declarant , stating that he has sold 2 acres of land in R.S.2 to one Kadeesumma . In that statement he made it clear that in R.S.No.2, he is in possession of only an extent of 43 cents. Ext. P1 order was passed in TLB.907 of 1973. Ext.P1 produced along with the Original Petition is not a complete document . The schedule of properties are not seen attached to Ext. P1.

3. The petitioner submitted Ext.P2 representation dated 21.02.1979 to the Chairman of the Taluk Land Board stating that the Taluk Surveyor and Village officials came to his property in R.S. 2/1 on 14.02.1979 without any prior notice and that they have measured the property stating that it is excess land . The petitioner referred to TLB. 907 of 1973 and stated that the acts of the officials were not proper. The petitioner filed O.P.No. 661 of 1979 complaining that Ext. P2 representation was not disposed of. O.P. 661 of 1979 was disposed of as per Ext. P3 judgment dated 27.02.1979 directing the first respondent, Chairman of the Taluk Land Board to dispose of Ext. P2 representation expeditiously. In the present Original Petition, the petitioner has stated in Ground A that without passing a formal order on Ext. P2 representation, the first

respondent proceeded to re-open the case for re-consideration on the basis of Ext.P4 report dated 15.06.1979 submitted by the Tahsildar. This contention is factually incorrect as is clear from Ext.R1(e) proceedings of the Taluk Land Board dated 02.02.1984. It is stated in Ext. R1(e) that the petition dated 21.02. 1979 was filed by the petitioner and he also filed O.P.661 of 1979 before the High Court, and the High Court disposed of O.P. 661 of 1979 directing the Taluk Land Board to dispose of the petition dated 21.02.1979, and that pursuant to that order, the case was being taken up . It is recorded in Ext.R1(e) thus:

> *"The petition when came up for hearing before the Taluk Land Board on 02.02.1984, the Advocate for the petitioner represented that the petitioner has no contention to agitate, and that the petition in question is not pressed. The petition is recorded accordingly."*

In view of Ext. R1(e), the averments in the Original Petition that Ext. P2 is not disposed of are absolutely baseless.

4. The petitioner tries to build up a case on the basis of the report, which according to the Government Pleader was mistakenly made stating that the extent of 2.68 acres in R.S.2/1 was not taken possession of. Based on Ext. P4 report, Ext. P5 proceedings were initiated by the Taluk Land Board . Notices were issued to all the parties concerned and they were heard. The Taluk Land Board disposed of the proceedings by Ext. P6 order which is under challenge in this Original Petition. The Taluk

Land Board found that in fact 2.68 acres in R.S.2/1 was already taken possession of in 1979 . Ext. P4 report would indicate that a balance extent of 3.03 acres has to be taken possession from the declarant Mammad Haji (father of the petitioner). Taluk Land Board found in Ext. P6 order that the Tahsildar had submitted a report dated 12.10.1984 stating that an extent of 3.03 acres is still to be taken possession of on a mistaken impression and without taking note of proceedings dated 22.02.1979 indicating that the 2.68 acres of land was taken possession of from R.S.2/1. The Taluk Land Board concluded that in view of the facts and circumstances , further proceedings are to be taken by the District Collector and the Taluk Land Board in respect of 2.68 acres in R.S. 2/1, which was taken possession of on 22.02.1979 and that it has become vested absolutely in the Government . The Taluk Land Board also directed that the balance extent shall be taken possession of from R.S. 147, for which nobody has raised any objection and all agreed that the said extent can be taken possession of from R.S. 147.

5. The petitioner wants to make out a case that he is in possession of 2.68 acres in R.S. 2/1 . He had no such case in the Ceiling Proceedings in which he was the declarant. The petitioner wants to make use of the erroneous reports including Ext.P4 report submitted by the Tahsildar that an extent of 2.68 acres in R.S.2/1 was not taken possession of.

6. Having not pressed Ext. P2 representation, the petitioner cannot be heard to say that the said petition was not disposed of by the Taluk Land Board . The petitioner has not disclosed the true facts before the court. In fact he has suppressed material facts. On the short ground that the petitioner has suppressed material facts, he is not entitled to get any reliefs . On the merits also, as discussed above, the petitioner has no ground to urge challenging Ext.P6 order passed by the Taluk Land Board . It is also to be taken note of that though a counter affidavit was filed producing all the relevant documents, no reply affidavit is filed so far.

The Original Petition lacks merits and it is dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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O.P. No. 6290 OF 2000

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Dated this the 6th March, 2007

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